

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19~~14~~¹⁵

No. [REDACTED] 154

JOHN D. FORD, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 19, 1914.

(24,223)

(24,223)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 486.

JOHN D. FORD, APPELLANT,

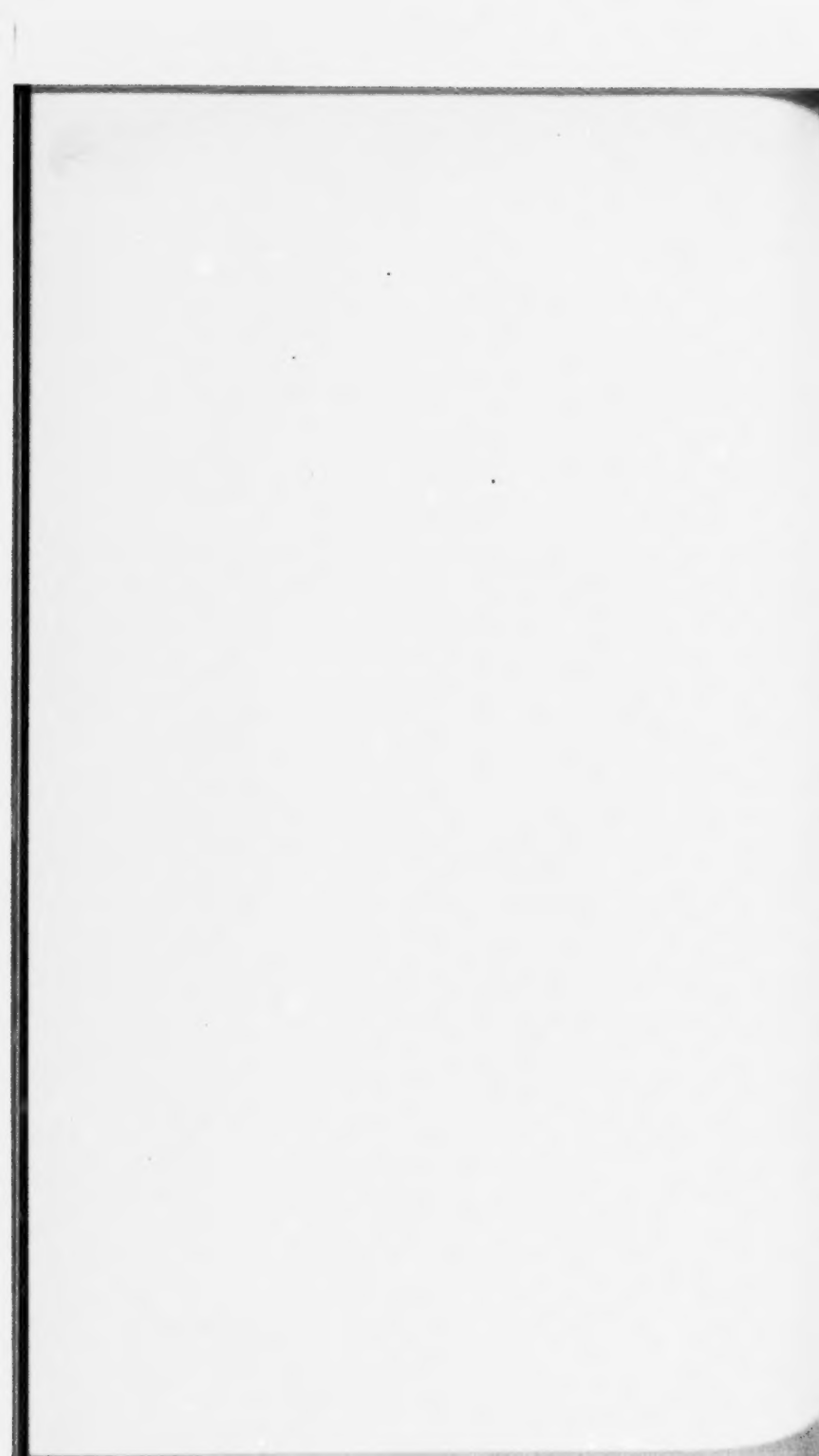
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 I. *Petition and Amended Petition.*

No. 32687.

JOHN D. FORD
vs.
THE UNITED STATES.

On November 1, 1913 the claimant filed his original petition.

Subsequently, to wit, on December 16, 1913, the claimant, by leave of Court, in lieu of said original petition, filed his amended petition, which is as follows:

Amended Petition.

To the Honorable the Court of Claims:

The amended petition of John D. Ford respectfully represents:

1. He is a citizen of the United States and a resident of Baltimore, Md., and is an officer of the United States Navy, holding the rank of Rear Admiral, Retired.

2. On May 19, 1902, while holding the rank of Captain on the active list of the United States Navy, he was retired under the provisions of Section 1444 Revised Statutes, and was advanced in grade pursuant to the provisions of the Act of March 3, 1899, Section 11 (30 S. L. 1006), and became a Rear Admiral. In accordance with the Act of March 4, 1911 (36 S. L. 1354) he was given a commission as a Rear Admiral on the retired list to rank from May 19, 1902.

3. From May 19, 1902, to December 25, 1907, he was on active duty in the city of Baltimore, Md., and in other places as inspector of machinery and ordinance, under orders of the Secretary of the Navy, under the provisions of the Act of June 7, 1900 (31 S. L. 703); and during said period he received the pay and allowances of a Captain, the grade from which he was retired.

2 4. On March 3, 1913, the following law was enacted:

"That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions." (37 S. L. 891.)

Said law provided for the allowance to this claimant of the pay and allowances of a Rear Admiral from the date stated in his commission, May 19, 1902, and he became and is now entitled to the difference between the pay and allowances of a Captain and a Rear Admiral on the active list for the period from May 19, 1902, to December 25, 1907, during which time he was on active duty and received the pay of Captain as aforesaid.

5. Claim for said difference was presented to the Auditor for the Navy Department and was disallowed by that officer.

6. To the best of claimant's knowledge and belief the difference between the pay and allowances given claimant and those to which he was entitled is \$5,500.

7. Claimant is the sole owner of this claim and has made no assignment thereof, he is justly entitled to the amount claimed after allowing all just credits and set-offs, he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government, and he believes the facts stated to be true.

And the claimant prays judgment for \$5,500.

F. A. FENNING,
Attorney for Claimant.

I, F. A. Fenning, do solemnly swear that I am the attorney in this case, that I have read the foregoing petition, and that I believe the facts therein stated to be true.

F. A. FENNING.

DISTRICT OF COLUMBIA, ss:

Subscribed and sworn to before me this 16th day of December, 1913.

[SEAL.]

ERSKINE GORDON,
Notary Public, D. C.

LLOYD ODEND'HAL,
SPENCER GORDON,
Of Counsel.

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II. *Traverse.* Filed December 17, 1913.

In the Court of Claims of the United States, December Term, A. D. 1913-1914.

No. 32687.

JOHN D. FORD
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

HUSTON THOMPSON,
Assistant Attorney General.
J. R. W.

4 III. *Defendant's Demurrer. Filed February 4, 1914.*

The defendants, by their Attorney General, demur to the amended petition in the above-entitled cause on the ground that it does not state facts sufficient to constitute a cause of action.

HUSTON THOMPSON,
Assistant Attorney General.

LOUIS G. BISSELL,
Attorney for the United States.

5 IV. *Argument and Submission of Demurrer.*

On April 27, 1913 the demurrer in this case came on to be heard. Mr. Louis G. Bissell was heard in support of the demurrer; Mr. Spencer Gordon was heard in opposition thereto and the demurrer was submitted.

6 V. *Judgment of the Court Sustaining the Demurrer and Dismissing the Petition.*

At a Court of Claims held in the City of Washington on the 4th day of May 1914, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants and do order, adjudge and decree, that the demurrer of the defendants be sustained, and that the petition of the claimant, John D. Ford, be, and the same is hereby dismissed.

BY THE COURT.

7 VI. *Application for and Allowance of Appeal to the Supreme Court.*

Now comes the claimant in the above entitled cause by Frederick A. Fenning, his attorney of record, and shows that the amount in controversy exceeds three thousand dollars, said amount being five thousand five hundred dollars.

And the claimant prays that this Court allow an appeal to the Supreme Court of the United States from the judgment rendered herein May 4, 1914, sustaining a demurrer and dismissing the suit.

FREDERICK A. FENNING,
Attorney of Record.

Filed May 12, 1914.

Ordered: That the above appeal be allowed as prayed for.
May 12, 1914.

BY THE COURT.

Court of Claims.

No. 32687.

JOHN D. FORD

vs.

THE UNITED STATES.

I, John Randolph, Assistant Clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the judgment of the Court sustaining the demurrer of the defendants and dismissing the petition of the claimant; of the application of the claimant for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington City, this 15th day of May, A. D. 1914.

[Seal Court of Claims.]

JOHN RANDOLPH,

Assistant Clerk Court of Claims.

Endorsed on cover: File No. 24,223. Court of Claims. Term No. 486. John D. Ford, appellant, vs. The United States. Filed May 19, 1914. File No. 24,223.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

JOHN D. FORD, APPELLANT,	} No. 154.
v.	
THE UNITED STATES.	

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

This is an appeal from a judgment of the Court of Claims sustaining the Government's demurrer and dismissing the petition. It is one of the class of cases similar in all respects to the case of *William W. White v. The United States*, No. 153, of the present term. As the legal questions raised are identical with those in the *White case*, the Government deems it unnecessary to present them in an additional brief and adopts in this case its brief in No. 153.

The facts herein are set forth in appellant's brief, pages 1 and 2.

It is respectfully submitted that the judgment of the lower court should be sustained.

HUSTON THOMPSON,
Assistant Attorney General.